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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,080	01/20/2004	Jason Collins	8713-PA01	4613
27111	7590	09/30/2004	EXAMINER	
GORDON & REES LLP 101 WEST BROADWAY SUITE 1600 SAN DIEGO, CA 92101			PATEL, MITAL B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,080

Applicant(s)

COLLINS, JASON

Examiner

Mital B. Patel

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-24 is/are allowed.
- 6) ☒ Claim(s) 1,2,7-10 and 13-16 is/are rejected.
- 7) ☒ Claim(s) 3-6, 11 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 7, 8, 9, 10, 13, 14, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sovinsky (US 2,775,967).

3. **As to claim 1**, Sovinsky teaches a protective mask for resisting biting by a detainee, the mask comprising: a panel of flexible, breathable (**See Col. 1, lines 53-68**) material **12** shaped to extend across and cover the nose, mouth and cheeks of a wearer; the panel having an upper edge for extending across the bridge of a wearer's nose, a lower edge for locating at or below a wearer's chin, opposite sides for positioning adjacent the ears of the wearer, an inner face for facing towards a wearer's face, and an outer face (**See Fig. 1**); at least one fastener strap **16** extending between the opposite sides of the panel for extending around the back of a wearer's head in order to secure the panel in position across a wearer's face; and the panel having a central region which is folded about an axis extending from the lower edge towards the upper edge of the panel to provide a tented, open region facing a wearer's face and extending below the nose and over the mouth of the wearer, the tented region being open at the lower edge of the panel to allow escape of body fluids (**See Fig. 1 which shows facepiece 12 extending away from the nose and mouth which extension**

the Examiner considers to read on a tented, open region and also being open below the mouth to allow escape of body fluids).

4. **As to claim 2**, Sovinsky teaches a mask, wherein the panel is of a breathable, flexible fabric material (**See Col. 1, lines 53-68**).

5. **As to claim 7**, Sovinsky teaches a mask, wherein the fastener strap is of elastic strip material (**See Col. 2, lines 28-30**).

6. **As to claim 8**, Sovinsky teaches a mask, including two spaced fastener straps extending from each side of the panel (**See Fig. 1**).

7. **As to claim 9**, Sovinsky teaches a mask, wherein at least one fastener strap extends between opposite sides of the panel at locations adjacent the upper edge of the panel, whereby the upper edge of the panel is held closely against the wearer's face when the mask is worn (**See Fig. 1**).

8. **As to claim 10**, Sovinsky teaches a mask, wherein the lower edge of the panel hangs free and unsecured when the mask is worn (**See Fig. 1**).

9. **As to claim 13**, Sovinsky teaches a mask, wherein the panel comprises two layers of material secured together around at least the upper, lower and side edges of the panel (**See Col.1, lines 64-68**).

10. **As to claim 14**, Sovinsky teaches a mask, wherein the panel is formed from a single sheet of material folded in half lengthwise to form said two layers. It should be noted that how the panel is formed is not given patentable weight in a product claim. Rather, patentable weight is given to the end product in this case the end product being two layers which is taught by Sovinsky, see Col. 1, lines 64-68. "Even though product-

Art Unit: 3743

by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted).

11. **As to claim 15**, Sovinsky teaches a mask, wherein the fastener strap comprises an elastic member extending between the two layers of material across the upper edge of the panel and outwardly from opposite sides of the panel for extending around the back of the wearer's head (**See Col. 2, lines 28-46**).

12. **As to claim 16**, Sovinsky teaches a mask, including at least one additional elastic member extending between opposite sides of the panel at a location spaced below said upper edge (**See Fig. 1 which shows another elastic member that sits below the ear**).

Allowable Subject Matter

13. Claims 3-6 and 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claims 17-24 are allowed over the prior art of record.

15. The following is a statement of reasons for the indication of allowable subject matter: As to claims 3, 17 and 24, the prior art of record does not teach nor render

Art Unit: 3743

obvious the overall claimed combination of a mask including an elongate strip member secured to the central region of the inner face of the panel to extend transversely across the mouth of the wearer and resisting biting by the wearer through the panel. As to claim 11, the prior art of record does not teach nor render obvious the overall claimed combination of a mask including a fold-forming strip of material secured between opposing, spaced portions of the inner face of the panel in the central region to hold the central region in a folded condition.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6464924, US 6374829, US 6145504, US 5785052, US 5765556, US 5664262, US 5570705, US 5538014, US 5431158, US 4827923, US 4719911, and US 652196.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (8:00 - 4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mital B. Patel
Examiner
Art Unit 3743